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IDAHO PERSONNEL COMMISSION  
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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

	)	
	)	
KRISTINA DIMOND-STAFFORD,	)	
	)	
Appellant-Respondent,	)	
	)	IPC NO. 98-11
	)	
vs.	)	
	)	
	)	<b>DECISION AND ORDER</b>
	)	<b>ON PETITION FOR</b>
IDAHO DEPT' OF HEALTH AND WELFARE	)	<b>REVIEW</b>
	)	
Respondent-Petitioner.	)	
_____	)	

THIS MATTER CAME ON FOR HEARING ON THE PETITION FOR REVIEW on November 13, 1998. Petitioner, Idaho Dep't of Health and Welfare (DHW), was represented by David W. Lloyd, Deputy Attorney General; Respondent, Kristina Dimond-Stafford (Dimond-Stafford), was represented by Thomas K. Okai. By order of the Commission, the matter was submitted for decision on the briefs.

The petition for review involves a request for interlocutory review of the hearing officer's order compelling discovery dated September 17, 1998. We decline to accept jurisdiction of this petition for review and DISMISS FOR LACK OF JURISDICTION.

**I.**

**BACKGROUND AND PRIOR PROCEEDINGS**

**A. Facts.**

Dimond-Stafford was employed by DHW at the Idaho State School and Hospital as a Developmental Disabilities Technician. On March 18, 1998, Dimond-Stafford received a Notice of Contemplated Action, in which DHW informed her that the Department was contemplating dismissing her. On March 23, 1998, Dimond-Stafford tendered a written resignation, which was accepted by DHW by letter of even date.

**B. Appeal to Personnel Commission.**

Dimond-Stafford filed a timely appeal to the Commission. The matter was referred to hearing officer Jean Uranga. On September 17, 1998, the hearing officer issued an Order Compelling Discovery.

On October 16, 1998, DHW filed its Petition for Interlocutory Appeal. DHW requested that this Commission reverse the Order Compelling Discovery and dismiss the appeal for lack of jurisdiction. Dimond-Stafford filed a Motion to Dismiss Respondent's Petition for Interlocutory Appeal on October 21, 1998.

**II.**

**ISSUE**

Does the Commission have jurisdiction to entertain a Petition for Interlocutory Appeal?

**III.**

**STANDARD AND SCOPE OF REVIEW**

The issues before the Commission in this proceeding are issues of law. The Commission exercises free review over matters of law, and "may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1)." *Soong v. Idaho Dep't of Health and Welfare*, IPC No. 94-03

(February 21, 1996), *aff'd* Case No. CV 96-00106 (Dist. Ct. 2nd Dec. 6, 1996) (footnote omitted).

#### IV.

#### ANALYSIS

This Commission first faced the question of interlocutory appeals in the matter of *Stacey v. Idaho Dep't of Labor*, IPC No. 95-04 (Decided April 10, 1998). In declining to accept jurisdiction to hear such interlocutory appeals, this Commission relied upon Idaho Code §§ 67-5316(5) and 67-5317.

Idaho Code § 67-5316(5) provides that “[p]rocess and procedure under this act shall be as summary and simple as reasonably may be.” In *Stacey*, the Commission recognized that in the course of an appeal a hearing officer may issue any number of orders designed to advance the appeals process. Generally, these orders involve pre-hearing schedules, discovery, hearing dates, or other procedural issues. “If every such decision were appealable,” the Commission noted, “the appeal procedure would be neither summary nor simple.” *Stacey*, Decision and Order on Petition for Review, page 6.

The Commission also noted the important distinctions between the appeal process, Idaho Code § 67-5316, and the petition for review process, Idaho Code § 67-5317. The appeal proceedings before the hearing officer are intended to address jurisdictional questions and get at the merits of an appeal, create a record, and make findings of fact and conclusions of law. On petition for review, the Commission reviews the record to determine whether the findings are supported by substantial, competent evidence, and exercises free review over questions of law. *Soong v. Idaho Dep't of Health and Welfare*, IPC No. 94-03 (February 21, 1996), *aff'd* Case No. CV 96-00106 (Dist. Ct. 2nd, Dec. 6, 1996). “When the Commission begins inserting itself into the process before the hearing officer, the appeal process and the

petition for review process become inextricably entwined, defeating the statutory scheme and obviating the purpose of having a hearing officer handle appeals.” Stacey, Decision and Order on Petition for Review, page 7.

**V.**

**CONCLUSION**

For the reasons set out above, we do not believe that Idaho Code §§ 67-5316 and 67-5307 confer jurisdiction on this Commission to hear interlocutory appeals from intermediate decisions of the hearing officer. The DHW’s petition for review is dismissed for lack of jurisdiction.

**VI.**

**STATEMENT OF APPEAL RIGHTS**

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

(1) That the findings of fact are not based on any substantial, competent evidence;

(2) That the commission has acted without jurisdiction or in excess of its powers;

(3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 8th day of January, 1998.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

/s/  
Sherry Dyer, Chair

/s/  
Peter Boyd

/s/  
Ken Wieneke

/s/  
Don Miller

/s/  
Dale Tankersley

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Decision and Order in *Idaho Dep't of Health and Welfare v. Dimond-Stafford*, IPC No. 98-11, was delivered to the following parties by the method stated below on the 8th day of January, 1999.

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\_\_\_\_\_/s/  
Val E. Rodriguez

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